

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA)	CASE NO. 5:95CV801
)	
Plaintiff,)	MAG. JUDGE: Patricia A. Hemann
)	
v.)	
)	
UNION CHEESE COMPANY, et al.)	<u>MOTION OF GUGGISBERG CHEESE,</u>
)	<u>INC. TO VACATE INJUNCTION</u>
)	
Defendants.)	

NOW COMES Guggisberg Cheese, Inc., successor in interest to Defendants Union Cheese Company and Dominic F. Gangale, by and through its undersigned counsel, to hereby move this Court for an order vacating the injunction entered by this Court in its Judgment Entry filed June 23, 1995, on the grounds that the prerequisites set forth by this Court in its Findings of Fact and Conclusions of Law filed June 16, 1995, for said injunction's termination have been met. A Memorandum in Support of this motion is attached hereto.

Respectfully Submitted,

CRITCHFIELD, CRITCHFIELD &
JOHNSTON, LTD.

By: /s/ Steven J. Shrock
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MEMORANDUM IN SUPPORT OF MOTION

By Judgment Entry dated June 23, 1995, this Court acted pursuant to the provisions of 21 U.S.C. section 332(a) to permanently restrain and enjoin Defendants, Union Cheese Company, a corporation, and Dominic F. Gangale and Annette M. Gangale, individuals, and all of their officers, directors, agents, representatives, employees, attorneys, heirs, assigns, successors, and any and all persons in active concert or participation with any of them, from directly or indirectly causing: (a) the introduction or delivery for introduction into interstate commerce of any article of food, and (b) the receipt, manufacture, preparation, packing, distribution, or holding of any article of food, while it is held for sale after it or one or more of its components have been shipped in interstate commerce, unless and until all of the requirements set forth in this Court's injunctive order of June 16, 1995 were met. That time has come.

Guggisberg Cheese, Inc. ("Guggisberg") is the successor in interest to Defendants, Union Cheese, Inc. and Dominic F. Gangale, as a result of having purchased substantially all the assets of said Defendants located at 1545 County Road 70, Sugarcreek, Ohio, pursuant to the terms and conditions of a certain asset purchase agreement (the "Asset Purchase Agreement") dated July 26, 1996. The purchase and sale of the assets described in the Asset Purchase Agreement closed on September 18, 1996 (the "Closing Date"). Since the Closing Date, Guggisberg Cheese, Inc. has operated the assets which it acquired from Union Cheese Company and Dominic F. Gangale in the manufacture and distribution of cheese under the close supervision of and with the knowledge and consent of the U.S. Food and Drug Administration (the "FDA"). The operations of Guggisberg Cheese, Inc. in the manufacture and distribution of cheese at 1545 County Road 70, Sugarcreek, Ohio are now in full compliance with the requirements of all applicable laws, rules, and regulations, and Guggisberg Cheese, Inc. has satisfied all of the requirements set forth in this Court's injunctive order of June 16, 1995.

Attached hereto as Exhibit A is a copy of Guggisberg's letter to the FDA dated November 4, 2005, in which Guggisberg details its efforts to alleviate its predecessor's violations and address the requirements of this Court's June 16, 1995 order. Guggisberg believes the FDA agrees that Guggisberg

has taken appropriate steps to remedy the problems at this facility, and thus does not anticipate any objection will be raised as to this Motion.

For the foregoing reasons, Guggisberg respectfully requests that this Court vacate its prior injunction entered by Judgment Entry filed June 23, 1995.

Respectfully Submitted,

**CRITCHFIELD, CRITCHFIELD &
JOHNSTON, LTD.**

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above Motion of Guggisberg Cheese, Inc. to Vacate Injunction was served by regular U.S. mail upon Plaintiff's counsel of record in this matter: Drake Cutini, Department of Justice, Civil Division, Tenth & Pennsylvania Avenue, NW, Washington D.C. 20503, and Michael Anne Johnson, Office of the U.S. Attorney, Northern District of Ohio, 801 Superior Avenue W., Cleveland, Ohio 44113, and also upon Guggisberg's present contact at the FDA: Steve Rabe, U.S. Food and Drug Administration, 6751 Steger Drive, Cincinnati, Ohio 45237, this 13th day of April, 2006.

/s/ Steven J. Shrock
Daniel L. Mathie
Steven J. Shrock